

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES SWEETEN,	§
	§ No. 154, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID Nos. 0901004330
	§ 0901010461
Plaintiff Below-	§
Appellee.	§

Submitted: May 5, 2011
Decided: June 13, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 13th day of June 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, James Sweeten, filed an appeal from the Superior Court's March 10, 2011 order denying his second motion for sentence modification pursuant to Superior Court Criminal Rule 35(b). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, on February 23, 2009, Sweeten and a co-defendant were indicted on first degree robbery and related charges. The same day, Sweeten and a different co-defendant were indicted on multiple robbery, burglary and theft charges. On March 17, 2009, the two cases were consolidated. On June 29, 2009, Sweeten pleaded guilty to one count of Robbery in the Second Degree, two counts of Conspiracy in the Second Degree, one count of Burglary in the Second Degree and two counts of Burglary in the Third Degree. He was sentenced to 23 years of Level V incarceration, to be suspended after 4 years and successful completion of the Greentree Program for Residential Substance Abuse Treatment, Aftercare and a period of probation.

(3) Sweeten filed his first motion for sentence modification in August 2009. He claimed at that time that he had worked as a confidential informant in several drug cases prior to his incarceration and that his safety was threatened. The Superior Court denied his motion in September 2009.

(4) In this appeal from the denial of his second motion for sentence modification, Sweeten claims that the Superior Court abused its discretion

¹ Supr. Ct. R. 25(a).

when it denied his motion. He contends that he is still in danger for being an informant and, for that reason, could not complete the Level V Greentree Program. He argues that the Level IV Gateway Program should be substituted for the Greentree Program. Sweeten also contends that his family situation and his efforts at rehabilitation constitute such “extraordinary circumstances” as would justify modifying his sentence under Rule 35(b).

(5) Under Rule 35(b), a motion for reduction or modification of sentence made after 90 days will be granted only in “extraordinary circumstances.” This Court previously has ruled that family hardship and rehabilitation efforts do not constitute such “extraordinary circumstances” as would justify a sentence modification.² Nor do we find that the Superior Court abused its discretion in concluding that Sweeten’s status as an informant justifies modifying his sentence.³

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

² *Iverson v. State*, Del. Supr., No. 490, 2009, Jacobs, J. (Jan. 12, 2010).

³ We note that, under Rule 35(b), the Superior Court would have acted within its discretion if it had refused to consider Sweeten’s repetitive request for sentence modification.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice